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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/596,160	06/01/2006	Eric Thomas Best	112701-733	2955
29157	7590	09/10/2009	EXAMINER	
K&L Gates LLP			PADEN, CAROLYN A	
P.O. Box 1135				
CHICAGO, IL 60690				
			ART UNIT	PAPER NUMBER
			1794	
			NOTIFICATION DATE	DELIVERY MODE
			09/10/2009	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

chicago.patents@klgates.com

Office Action Summary	Application No. 10/596,160	Applicant(s) BEST ET AL.	
	Examiner Carolyn A. Paden	Art Unit 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 April 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>12-8-06</u> . | 6) <input type="checkbox"/> Other: _____ |

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1- 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mandralis (5,523,110).

Mandralis discloses polyol gel addition to chocolate. The polyol gel is said to improve heat resistance of chocolate confectionary products (abstract). The gel beads are formed from a polyol (column 2, lines 61-67) which is gelled with a gelling agent (column 2, lines 53-60). The gelling agents are the same as set forth in claim 3. Emulsifiers are contemplated as an ingredient in the composition (column 4, lines 26-27). The gelling agent is used in an amount of 0.5% to 15% by weight of the polyol (column 3, lines 39-41). The polyol may be used in a dry form or as a mixture with water (column 3, lines 1-11). In the cold method of preparing the polyol beads, the mean diameter of the beads is from 1-1000 microns (column 4, lines 4-8). In the hot method of forming the beads, the particle size is below about 100 microns(Column 4, lines 18-26) . Chocolate is then added to the polyol gel. In example 6 the amount of polyol in the gell

beads appears to fall within the range of the claims (column 6, lines 27-32).

The claims appear to differ from Mandralis in the recitation that the emulsion is water in oil emulsion. It is appreciated that the type of emulsion formed in Mandralis is not mentioned but given the amount of fat typically present in chocolate, one of ordinary skill in the art would expect that the emulsion formed was water in oil emulsion. It is also appreciated that the amount of gel beads set forth in claim 15 is not mentioned. But one of ordinary skill in the art would be able to modify the amount of gel beads according to the rate of hardening desired in the final chocolate. It is also appreciated that cocoa butter substitutes are not mentioned. Cocoa butter is known in the art to be an expensive commodity. To use alternatives to cocoa butter would have been an obvious way to control and adjust the cost of the chocolate product. It is also appreciated that freezing is not mentioned as a way to initiate hardening of the chocolate but freezing is known in the art to solidify food ingredients.

Claims 1-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Garwood (5,866,189 or 6,168,189 or 5,923,388).

Each of the Garwood references is related to modifying the texture of food products. The references are similar but US Patent 5,186,189 will be

specifically relied upon in this rejection. The partiulated plasticizer gel is formed from plasticizer and a gelling agent. The plasticizer is described as being a polyol (column 3, lines 7-9). The gelling agent includes the ingredients mentioned in claim 3 (column 3, lines 29-32). Emulsifiers are contemplated at column 4, lines 37-38; column 5, line 14 and column 6, line 3. In the cold method of preparing the polyol beads, the mean diameter of the beads is from 1-1000 microns (column 4, lines 12-14). In the hot method of forming the beads, the particle size is below about 100 microns (Column 4, line 37) . In example 1 melted fat is added to the gelled polyol. The claims appear to differ from Garwood in the recitation that the emulsion is water in oil emulsion. It is appreciated that the type of emulsion formed in Garwood is not mentioned but given the amount of fat present in the composition, one of ordinary skill in the art would expect the product formed to be water in oil emulsion.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn A Paden whose telephone number is (571) 272-1403. The examiner can normally be reached on Monday to Friday from 7 am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached by dialing 571-272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Carolyn Paden/

Primary Examiner 1794

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